IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 18TH JUNE 2007 / 28TH JYAISHTA 1929

WP(C).No. 17284 of 2007(G)

OS.165/2001 of I ADDL.SUB COURT, KOZHIKODE

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PETITIONER: SECOND DEFENDANT/JUDGMENT DEBTOR

P.P.AYISHAKUTTY, W/O. LATE AHAMEDKOYA
HAJI, PUTHEN PEEDIYEKKAL HOUSE,
MOORIYADU, CHALAPPURAM, CALICUT.

BY ADV. SRI.K.M.FIROZ

RESPONDENTS: PLAINTIFF-FIRST DEFENDANT/DECREE HOLDER

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1. THE STATE BANK OF INDIA,
CALICUT MAIN BRANCH, CALICUT.

2. P.P.SHABEER, S/O. LATE AHMEDKOYA HAJI,
PROPRIETOR, SHABEER TIMBERS, MOORIYADU P.O.,
CHALPPURAM, CALICUT.

R1 BY ADV. SRI.R.S.KALKURA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS EXTS:

EXT.P1: TRUE COPY OF THE DECREE PASSED BY THE HONOURABLE SUB COURT IN O.S.165/2001

EXT.P2: -DO- OFTHE CERTIFIED COPY OF THE RULE 66 NOTICE AND REPORT OF THE PROCESS SERVER APPLIED AND OBTAINED BY THE PETITIONER

EXT.P3: -DO- OF THE APPLICATION (I.A.1511 OF 2006) FILED BY THE PLAINTIFF

EXT.P4: -DO- OF THE COUNTER FILED BY THE PETITIONER IN I.A.1511/06

EXT.P5: -DO- OFTHE ORDER DT.5.3.2007 ALLOWING AMENDMENT OF JUDGMENT AND DECREE

EXT.P6: -DO- DT.21.3.2007 DIRECTING SALE IN THE EXECUTION APPLICATION FILED PRIOR TO AMENDMENT

jj /TRUE COPY/

PA.TO JUDGE

M.N.KRISHNAN, J.

WP(C)No. 17284 OF 2007 G

Dated this the 18th June, 2007.

JUDGMENT

This writ petition is filed seeking to quash Exts.P5 and P6 orders. The plaintiff obtained a decree in O.S.165/01. When the decree was put into execution he found that though there was a prayer for realisation of the amount by sale of the mortgaged property it was not incorporated in the decree. Therefore, moved an application under Section 152 of the Code of Civil Procedure to correct it. Learned counsel for the decree holder placed before me for perusal the prayer in the plaint. The prayer in the plaint is very clear that it must be a decree for realisation of the amount personally as well as by sale of the property mortgaged. So, it was only an omission done by the court at the time of drafting the decree and therefore the trial court has not committed any error in allowing the amendment for a charge decree. The next point is regarding execution. It is submitted by the learned counsel that 60 cents of property is involved and the land value in Koduvally town is high and that a sale of portion of the property will be sufficient for discharging the decree debt. On the other hand learned counsel for the decree holder would submit that being a

mortgage decree it cannot be sold in fraction. This aspect of the matter may be considered by the executing court after permitting both sides to produce authorities in that behalf and thereafter proceed to dispose of the property in accordance with law. Till a decision is taken on the said point the sale shall be deferred. Writ petition is disposed of accordingly.

M.N.KRISHNAN
Judge

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